

**BOARD OF ENVIRONMENTAL PROTECTION  
Meeting Minutes**

May 7, 2009

A meeting of the Board of Environmental Protection was held on Thursday, May 7, 2009 at the Holiday Inn / Ground Round, Augusta, Maine. Susan M. Lessard, Chair, called the meeting to order at 09:00 a.m. with the following individuals present:

**Board:** M. Wing Goodale, Richard Gould, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Nancy Ziegler.

Absent: Elizabeth Ehrenfeld

Vacancy: There is one vacancy on the Board.

**Staff:** Pete Carney, Office of the Commissioner  
Jeffrey Crawford, Bureau of Air Quality  
Thomas Danielson, Bureau of Land and Water Quality

**Others:** David P. Littell, Commissioner  
Nancy Macirowski, Assistant Attorney General  
Cindy Bertocci, BEP Executive Analyst  
Terry Hanson, BEP Administrative Assistant

***(Meeting adjourned at approximately 12:30 p.m.)***

**I. DEPARTMENTAL**

**A. COMMISSIONER'S COMMENTS:**

Legislative / Federal: Commissioner Littell noted that the Department and the other RGGI states are monitoring the climate change bills in Congress including the Waxman-Markey bill for potential impacts on RGGI. He anticipates many meetings in the coming months to help shape climate change legislation.

105 Grant: US Environmental Protection Agency (EPA) has advised states that it intends to reallocate clean air funding (105 Grant). As proposed, this reallocation would reduce funding to New England states by one-third, which would amount to a 10% cut for Maine's air program. All 6 New England commissioners signed a letter to the EPA administrator communicating the impacts of such a reduction on their air quality programs. Funding is being shifted to the south and mid-west.

Board member P. Andrews Nixon asked about the rationale behind the reallocation.

Commissioner Littell explained that the existing funding formula is 20 years old. The proposed update is based on several factors (population, non-attainment, and air toxics risk) with the largest weight being population which provides states with the largest populations with the most benefit.

Board member Nancy Ziegler asked if revenue from the carbon trade auction could be used to fill funding gaps resulting from EPA's reallocation.

*No, language in the Legislative bill stipulated that no RGGI funding would go to the DEP, a position the Department supported. All revenue from the auction is directed to the Energy and Carbon Savings Trust Fund to fund energy efficiency projects, etc. as determined by the Trust through rulemaking. Statute authorized payment for Maine's share of the cost to run the regional program through the regional organization RGGI Inc.*

Legislative:

Budget: the third round of budget cuts resulted in no direct cuts to the Department; however, state-wide cuts are anticipated.

Climate Change: Legislative work continues on the three major bills concerning climate change. Language changes to the bills will be sensitive to the current economic situation as it relates to financial impacts on industry, private enterprise and state resources. The Natural Resources Committee is scheduled to report out all bills next Friday.

Pharmaceutical bill: The bill related to product stewardship associated with pharmaceutical disposal will be held over to the second session.

Questions:

Board member Matt Scott mentioned that the federal government will allow up to 15% use ethanol in gasoline within the next year (noting that some southern states are at those levels). The fuel creates problems when used in boats, lawn mowers, chain saw, etc. ~ are any states looking into a ban?

Commissioner Littell advised that no ban is being considered. He further explained that although ethanol does not increase the amount of water in the fuel, the ethanol easily combines with any water that may be present in a tank causing it to separate out. This presents challenges when switching to ethanol containing fuels requiring storage tanks to be cleaned before the change over. Fuel markets are driven by the Federal Energy Act, many states have opted into the federal program (ethanol). The renewable fuel standard increases the percentage of ethanol potentially to 15% and EPA is considering this percentage. There is a bill in our legislature that would require the gas stations to carry the old gasoline (7.8 Reid vapor pressure, no MTBE).

Board member Scott commented on the carbon footprint associated with growing soy or corn to produce fuels which are being subsidized.

Commissioner Littell explained that Maine along with 12 other northeastern states is looking at the renewable fuel standards developed by California which would include a full life cycle analysis. Life cycle analysis is currently being developed by academics (California and EPA) and the production of ethanol and bio-diesel from woody bio-mass looks promising.

Board member M. Wing Goodale asked for an update on Mercury legislation.

The bill to limit the amount of mercury in compact fluorescent bulbs is in Committee. The bill to ban use of mercury in wheel weights and recoil devices on firearms was heard with no opposition; opposition associated with the thermostats has been resolved.

**B. COMMENTS FROM THE BEP CHAIR:**

Chair Lessard announced that Board member Don Guimond is the recipient of the U.S. Small Business Administration's Phoenix Award in recognition of his efforts supporting his community during the spring flood of 2008. Chair Lessard congratulated Mr. Guimond and expressed her thoughts that the award was well deserved.

**C. EXECUTIVE ANALYST COMMENTS:** None

**D. BOARD CALENDAR:** Reviewed.

**E. DEPARTMENTAL ORDERS/ APPLICATIONS ACCEPTED FOR PROCESSING:** None

**F. EXECUTIVE SESSION:** None

**II CONSENT AGENDA ITEMS:** Chair Lessard noted the Administrative Consent Agreements posted for public comment.

### III. Regular Agenda

1. FOLLOW-UP FROM MARCH 19, 2009 ENFORCEMENT BRIEFING (question and answer session)

Staff: Pete Carney, Office of the Commissioner

Board members received clarifying information on several aspects of the Department's enforcement policies and programs including: supplemental environmental projects, consideration of past violations when calculating penalties, and fines associated with after-the-fact permits. Discussions touched upon types of violations and the distinction between operational violations and violations associated with infrastructure deficiencies. Board members noted an interest in continued educational efforts for smaller operations especially those generating hazardous wastes. Members also expressed the view that the Department examine its penalty policies periodically to ensure the penalties create a sufficient deterrent as opposed to a simple cost of doing business. Members also expressed concern that agreements addressing violations impacting significant wildlife habitat, especially in the shoreland zone, have robust habitat restoration requirements.

2. CHAPTER 131 CUTBACK ASPHALT AND EMULSIFIED ASPHALT / AMENDMENT (post to public hearing)

Staff: Jeffrey Crawford, Bureau of Air Quality

The Board voted (7-0-0-2) to post Chapter 131, Cutback Asphalt and Emulsified Asphalt amendments to public hearing. Proposed amendments update the standards to satisfy the requirement for reasonably available control technology (RACT) controls on VOC emission sources. The amendments prohibit the use of cutback asphalt during ozone season and limit the use of emulsified asphalt to that which contains not more than 6.0 ml of oil distillate for all asphalt paving activities. A June 18, 2009, public hearing is anticipated and the deadline for written public comment is June 30, 2009. The vote was taken pursuant to 38 M.R.S.A. § 341-D(1-B), 585-A and the Clean Air Act Amendments of 1990.

*Board members M. Wing Goodale, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board members Elizabeth Ehrenfeld and Richard Gould were absent. There is one vacancy.*

3. CHAPTER 583 NUTRIENT CRITERIA FOR FRESH SURFACE WATERS / NEW (briefing and post to public hearing)

Staff: Tom Danielson, Bureau of Land and Water Quality

The Board voted (7-0-0-2) on a motion to post Chapter 583, Nutrient Criteria for Fresh Surface Waters to public hearing. This new regulation proposes to establish a numeric criteria related to nutrient enrichment for interpreting existing water quality standards for Class AA, A, B, C, and GPA surface waters. The regulation will assist in determining if nutrients caused or contributed to impairments related to attainment of water classification and water quality standards. A June 18 public hearing is anticipated and the deadline for written public comment is July 30, 2009. The vote was taken pursuant to 38 M.R.S.A. §341-D(1-B), 464, 465, and 465-A.

*Board members M. Wing Goodale, Don Guimond, Sue Lessard, P. Andrews Nixon, Matt Scott, Lissa Widoff, and Nancy Ziegler voted to support the motion. Board members Elizabeth Ehrenfeld and Richard Gould were absent. There is one vacancy.*

4. Informational Session on Vernal Pools

Staff: Tom Danielson, Bureau of Land and Water Quality

The visit to a vernal pool was canceled due to weather conditions. Staff member Danielson presented a slide show during which he reviewed the characteristics of vernal pools and the wildlife that depend upon vernal pools to complete their life cycles. Mr. Danielson also had live specimens of salamander egg masses and various species of amphibians for Board members to observe.